

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 In re SUBPOENA TO MILLIMAN, INC.

10 Case No. C18-418RSL

11 WILLIAM JEFFREY BURNETT, and JOE H.
12 CAMP,

ORDER DENYING MOTION
TO COMPEL

13 Plaintiffs,

14 v.

15 CONSECO LIFE INSURANCE COMPANY,
16 *et al.*,

17 Defendants.

18 This matter comes before the Court on “Plaintiffs’ Motion to Compel Production of
19 Milliman Appraisal Documents.” Dkt. # 1. The Court has reviewed the motion, the parties’
20 memoranda, the attached exhibits, and the remainder of the record.¹ For the following reasons,
21 the motion is DENIED.

22 **I. BACKGROUND**

23 This motion concerns plaintiffs’ attempts to obtain documents involved in another case
24 they are litigating before Judge Richard L. Young of the United States District Court for the
25 Southern District of Indiana. See Burnett v. Consec Life Ins. Co., Case No. C18-200RLY (S.D.
26

27 ¹ The Court concludes the motion can be decided on the papers submitted. Plaintiffs’
28 request for oral argument is DENIED.

1 Ind. Jan. 25, 2018). Plaintiffs are former life insurance policyholders who sued Conseco Life
2 Insurance Company and its parent entities (collectively “Conseco Life”), alleging Conseco Life
3 breached the relevant insurance contracts by increasing premiums in order to force policyholders
4 to abandon their policies. Before the premium hikes, Conseco Life engaged Milliman, Inc. to
5 produce an actuarial appraisal report (the “Appraisal”) that plaintiffs assert contains information
6 relevant to their claims.

7 Plaintiffs initially sought the Appraisal from Conseco Life, but apparently have obtained
8 only unsatisfactorily redacted copies. See S.D. Ind. Dkt. # 118 at 9–10. For that reason,
9 plaintiffs have pursued the Appraisal from Milliman too. In June 2014, plaintiffs served
10 Milliman with a subpoena seeking a copy of the Appraisal, but various developments in the case
11 delayed the subpoena’s enforcement for several years. Plaintiffs filed this cause seeking to
12 enforce the subpoena against Milliman here in the district where it is headquartered. Plaintiffs
13 continue to seek the Appraisal from Conseco Life and have filed a similar motion to compel in
14 the Indiana case before Judge Young. See S.D. Ind. Dkt. # 118. As of the issuance of this order,
15 that motion remains pending. Milliman opposes plaintiffs’ motion, Dkt. # 9, but has not sought
16 to quash the subpoena or transfer this matter.²

17 II. DISCUSSION

18 Federal Civil Rule 45 allows parties to serve persons with subpoenas that include a
19 “command to produce” documents. See Fed. R. Civ. P. 45(a)(1)(A)(iii), (D). In accordance with

21 ² Federal Civil Rule 45 provides a mechanism for transferring subpoena disputes like this
22 “to the issuing court if the person subject to the subpoena consents.” Fed. R. Civ. P. 45(f). The subpoena
23 appears to have been issued by the United States District Court for the Northern District of California in
24 In re Conseco Life Insurance Co. LifeTrend Insurance Sales & Marketing Litigation, Case No. MD10-
25 2124SI (N.D. Cal. Feb. 5, 2010), but the case has since been transferred to the Southern District of
26 Indiana before Judge Young. See Dkt. # 1 at 3 n.1. As for consent, Milliman asserts “the Southern
27 District of Indiana . . . is where these issues should be determined,” see Dkt. # 9 at 4, but has not
28 explicitly consented to or requested that the matter be transferred there. Consent is significant given
Rule 45’s preference that, without a subject party’s consent, subpoenas should be enforced where the
subject party resides. See Europay Capital Advisors, LLC v. Does, 323 F.R.D. 628, 629–30 (C.D. Cal.
2018). Transfer may be an option, but given these uncertainties the Court will not transfer the matter in
this Order without a request from Milliman.

1 Rule 45, “a nonparty may be compelled to produce documents and tangible things or to permit
2 an inspection.” Fed. R. Civ. P. 34(c). There is no explicit rule that a party must first seek those
3 documents from an opposing party, but courts generally “must limit the frequency or extent of
4 discovery otherwise allowed by [the Rules] if it determines . . . the discovery sought is
5 unreasonably cumulative or duplicative, or can be obtained from some other source that is more
6 convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i).

7 Because this issue will be squarely addressed in the motion pending before Judge Young
8 in the Indiana litigation, the Court concludes that it is more appropriate to await the issue’s
9 resolution in that case. In general, “[t]he presiding court is in th[e] best position to determine . . .
10 underlying discovery dispute[s],” Cabell v. Zorro Prods., Inc., 294 F.R.D. 604, 607 (W.D.
11 Wash. 2013), and Judge Young has managed the case and its substantive issues thus far. In
12 addition, plaintiffs can obtain the material they seek from Conesco Life and deciding the issue in
13 the underlying litigation serves the Court’s duty to limit discovery that is cumulative or more
14 conveniently obtained from some other source. See Fed. R. Civ. P. 26(b)(2)(C)(i). The Court
15 will accordingly deny plaintiffs’ motion to compel at this time given the issue’s likely resolution
16 in the Indiana case.

17 III. CONCLUSION

18 For the foregoing reasons, plaintiffs’ motion, Dkt. # 1, is DENIED, without prejudice to
19 plaintiffs seeking relief again in this Court if it is not otherwise available.

20 DATED this 14th day of September, 2018.

21
22
23 

24 Robert S. Lasnik
25 United States District Judge
26
27
28